

APPEAL NO. 031073
FILED JUNE 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 19, 2003, with the record closing on April 10, 2003. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on February 6, 2002, with a 5% impairment rating (IR), as certified by the required medical examination (RME) doctor. The claimant appeals these determinations on sufficiency of the evidence grounds and asserts that the hearing officer erred in not giving presumptive weight to the MMI/IR certification of the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The respondent (carrier) urges affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable lumbar spine injury on _____. Medical records show that she was diagnosed with mild L5-S1 spondylolisthesis and left sided radiculopathy. The claimant underwent multiple surgeries for this condition, which included a spinal fusion with instrumentation.

The claimant was certified at MMI on February 6, 2002, by her referral doctor, with a 20% IR under Diagnosis-Related Estimate (DRE) Model, lumbosacral category IV of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (Fourth Edition AMA Guides). It appears that the treating doctor used the Range of Motion Model of the Fourth Edition AMA Guides to assess the claimant's IR and converted that rating to the nearest category under the DRE Model, without consideration of the requirements of that category. The carrier disputed the certification and a designated doctor was appointed by the Commission.

The designated doctor certified the claimant with a 20% IR under the DRE Model lumbosacral category IV, regarding loss of motion segment integrity. The designated doctor's examination revealed muscle spasm and guarding in lumbar spine, loss of reflexes, atrophy and weakness in the left lower extremity, and sensory loss consistent with L5 and S1 radiculopathy. Acknowledging the absence of x-rays demonstrating loss of motion segment integrity, the designated doctor, nonetheless, placed the claimant into lumbosacral category IV, stating:

She does have a spondylolisthesis with loss of motion segment integrity or radiculopathy which puts her into Category 3, 4 [sic] or 5 I do feel the fact that she did have the fusion for stability reasons it's is [sic] applicable to put her at least into the category 4 [sic], which will convert into [Table]

72 with a 20% impairment rating utilizing the whole body impairment rating as the radiculopathy is there, manifested by the atrophy and the manual motor testing showing her to have the diffuse weakness. Thus I think she is at least 20% utilizing all of those things.

The carrier's RME doctor later certified the claimant at MMI on February 6, 2002, with a 5% IR under lumbosacral category II. The report indicates that the claimant exhibited spasm and guarding in the lumbar spine but noted no medical records indicating loss of motion segment integrity warranting a rating under lumbosacral category IV. The carrier RME also asserted that "the presence of a fusion would rule out loss of motion segment integrity." The report also indicates that the claimant did not exhibit neurological impairment in the lower extremities.

The Commission subsequently requested clarification from the designated doctor in view of the RME doctor's report. The designated doctor did not change his IR and clarified that the claimant reached MMI on April 11, 2002, after the date of statutory MMI. Following the hearing below, the hearing officer requested further clarification of the designated doctor's IR, given the absence of x-rays showing segmental instability. The designated doctor did not respond.

The hearing officer did not err in determining that the claimant reached MMI on February 6, 2002, with a 5% IR, as certified by the carrier RME doctor. Sections 408.122(c) and 408.125(e), effective for compensable injuries before June 2001, essentially provide that the report of a Commission-appointed designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence, in which case the Commission shall adopt the certification of another doctor. We have held that impairment must be permanent to be rated under the 4th Edition AMA Guides. Texas Workers' Compensation Commission Appeal No. 030091-s, dated March 5, 2003. Additionally, a designated doctor's report must be based upon the AMA Guides. Section 408.124(c); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1 (Rule 130.1). The Fourth Edition AMA Guides provides that loss of motion segment integrity is evaluated with flexion and extension roentgenograms (x-rays). Texas Workers' Compensation Commission Appeal No. 022509-s, decided November 21, 2002, citing page 98 and Table 71, No. 5, page 109 of the Fourth Edition AMA Guides; (reversing an IR under DRE lumbosacral category V, regarding loss of motion segment integrity with radiculopathy, because the designated doctor failed to base the assessment of loss of motion segment integrity on flexion and extension x-rays). In the present case, the designated doctor appears to base his assessment of loss of motion segment integrity on the claimant's presurgery diagnosis of spondylolisthesis and absent flexion and extension x-rays. Accordingly, the hearing officer did not err by not affording presumptive weight to the designated doctor's report. The hearing officer's MMI/IR determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge